

1 ERNEST J. BROOKS, III, T-61049
2 C.S.A.T.F. E3-143L
3 P.O. BOX 5242
4 900 QUEBEC AVENUE
5 CORCORAN, CA 93212-5242

6 In Propria Persona

FILED

2008 AUG 19 PM 3:00

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY Rm DEPUTY

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AUG 15 2008

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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
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11 ERNEST J. BROOKS, III,
12 Petitioner,
13 v.
14 KEN CLARK, Warden,
15 Respondent.
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CASE NO: 08cv0125 JM (BLM)

TRAVERSE TO RESPONDENTS ANSWER
TO PETITIONER'S PETITION FOR
WRIT OF HABEAS CORPUS

17 COMES NOW PETITIONER, Ernest J. Brooks, III, a State Prisoner,
18 proceeding pro se, to bring this Traverse to Respondents Answer to
19 Petitioner's Petition for Writ of Habeas Corpus. Petitioner herein addresses
20 each of the Respondents Answers, by paragraph. Except as expressly admitted
21 herein, or in the Memorandum of Points and Authorities herewith, Petitioner
22 **DENIES** each allegation in Respondents Answer and specifically restates the
23 argument set forth in his Habeas Corpus Petition.

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I.

Petitioner **AGREES** with Respondents Answer in Paragraph I, with the following exception noted: Petitioner contends he is unlawfully incarcerated at California Substance Abuse Treatment Facility & State Prison, because his right to due process and a fair trial was violated.

II.

Petitioner **AGREES** with Respondents Answer in Paragraph II, with the following exception noted: Petitioner contends that he has not been accorded an Evidentiary Hearing at any stage of his appeals process, and that the Federal Court must conduct one, for reasons set forth more fully in Petitioner's Memorandum of Points and Authorities, filed herewith.

III.

Petitioner **DENIES** Respondents contentions, as stated in Paragraph III of Respondents Answer, and asserts that the Trial Court violated his right to due process and a fair trial, when it failed to sustain Petitioner's objection to testimony of prior acts of sodomy and/or anal penetration as propensity evidence (pursuant to Cal. Evid. Code Sections 1108/352) without limitation, which was in violation of its own pretrial order.

IV.

Petitioner **DENIES** the Respondents contentions as stated in Paragraph IV of Respondents Answer.

V.

Petitioner **DENIES** the Respondents contentions as stated in Paragraph V of Respondents Answer.

VI.

The relevant facts and procedural history set forth in the accompanying Memorandum of Points and Authorities are incorporated by

1 reference herein. Except as expressly admitted herein, or in the Memorandum
2 of Points and Authorities, Petitioner **DENIES** each allegation in Respondents
3 Answer and specifically restates the argument set forth in his Habeas Corpus
4 Petition.

5 **VIII.**

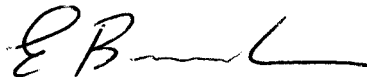
6 Petitioner **DENIES** the Respondents contentions as stated in Paragraph
7 VIII of Respondents Answer.

8 **CONCLUSION**

9 Wherefore, for the reasons set forth in this Traverse, and
10 Memorandum of Points and Authorities filed in support of Petitioner's Traverse
11 and incorporated herein by reference, this Court should grant an Evidentiary
12 Hearing, and appoint counsel on behalf of Petitioner for further consideration
13 and determination to vacate Petitioner's conviction and remand for a new
14 trial.

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16 Dated: August 12, 2008

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18 Respectfully Submitted,

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21 Ernest J. Brooks, III, Petitioner, Pro Se
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